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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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United Nations • New York, 2018

Note

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ISSN 0255-1276

[1 March 2018]

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Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 72/118 and met at United Nations Headquarters from 20 to 28 February 2018.

2. In accordance with paragraph 5 of General Assembly resolution 50/52, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held three meetings: the 287th to 289th, on 20 and 28 February. The Working Group of the Whole, established at the 287th meeting, held three meetings, between 21 and 23 February.

4. The session was opened by Ruslan Varankov (Belarus) in his capacity as Chair of the previous session of the Special Committee.

5. At its 287th meeting, on 20 February, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981,[1] elected the following members of its Bureau:

Chair:
Omar Hilale (Morocco)

Vice-Chairs:
İpek Zeytinoğlu Özkan (Turkey)
Héctor Enrique Celarie Landaverde (El Salvador)
Igor Bondiuk (Ukraine)

Rapporteur:
Luke Tang (Singapore)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.

7. The Director of the Codification Division of the Office of Legal Affairs acted as Secretary of the Special Committee. The Principal Legal Officer of the Division acted as Assistant Secretary of the Special Committee. The Division provided substantive services for the Special Committee and the Working Group.

8. At its 287th meeting, the Special Committee adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions referred to in General Assembly resolution 72/118, in accordance with the mandate of the Special Committee as set out in that resolution.
6. Adoption of the report.

[1] See A/36/33, para. 7.

9. General statements touching on all or several items were made at the 287th and 288th meetings. Their substance is reflected in the relevant sections of the present report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it all the related reports of the Secretary-General,[2] including the most recent report, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions",[3] and the 1998 report on that topic, containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162.[4] The Special Committee also had before it Assembly resolution 64/115 and the annex thereto, entitled "Introduction and implementation of sanctions imposed by the United Nations".

11. The Special Committee also had before it the following documents:[5] a revised proposal submitted at the 1998 session by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security;[6] a further revised version, submitted at the 2014 session, of the working paper submitted by Belarus and the Russian Federation at the 2005 session on an advisory opinion to be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence;[7] a working paper submitted by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations;[8] and a revised working paper submitted by Ghana at the 2018 session on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes.[9]

12. With regard to the question of the peaceful settlement of disputes, the Special Committee undertook the first annual thematic debate on the means for the settlement of disputes, in accordance with Chapter VI of the Charter, including in particular those contained in Article 33 thereof, and consistent with the Manila Declaration on the Peaceful Settlement of International Disputes. During that debate, the discussions were focused on the subtopic "Exchange of information on State practices regarding the use of negotiation and enquiry". The Special Committee also had before it a proposal, revised in 2014 by the Russian Federation, recommending that the Secretariat be requested to establish a website dedicated to the peaceful settlement of disputes between States and to update the *Handbook on the Peaceful Settlement of Disputes between States*.[10]

13. At its 289th meeting, on 28 February, the Special Committee adopted its report on its 2018 session.

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[2] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383, A/54/383/Add.1, A/55/295, A/55/295/Add.1, A/56/303, A/57/165, A/57/165/Add.1, A/58/346, A/59/334, A/60/320, A/61/304, A/62/206, A/62/206/Corr.1, A/63/224, A/64/225, A/65/217, A/66/213, A/67/190, A/68/226, A/69/119, A/70/119 and A/71/166.

[3] A/72/136.

[4] A/53/312.

[5] Prior to the opening of the 2018 session, the Bolivarian Republic of Venezuela communicated its decision to withdraw the working paper (A/66/33, annex) that it had submitted during the 2011 session, containing a further revised version of the proposal submitted by the same delegation at the 2010 session, entitled "Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs".

[6] See A/53/33, para. 98.

[7] See A/69/33, para. 37.

[8] A/67/33, annex.

[9] A/AC.182/L.148, reproduced in the annex to the present report.

[10] See A/69/33, para. 52.

Chapter II
Maintenance of international peace and security

14. The Special Committee considered the item entitled "Maintenance of international peace and security" during the general exchange of views held at its 287th and 288th meetings, on 20 February, and at the 1st and 2nd meetings of the Working Group of the Whole, on 21 and 22 February.

15. In their general comments, some delegations reaffirmed that the reform of the Organization should be carried out in accordance with the principles and procedures established by the Charter, and that the General Assembly remained the chief deliberative, policymaking and representative organ of the United Nations. Some delegations expressed their concern that the Security Council had encroached on the functions and competences of the Assembly and the Economic and Social Council by addressing issues that fell within the competences of those organs. The view was expressed that there was a need to achieve the delicate balance envisaged by the Charter between the functions and powers of the principal organs of the United Nations. It was further emphasized that the Special Committee was the appropriate forum for examining the legal aspects of those issues.

16. It was also noted that communications to the Security Council under Article 51 of the Charter had increased, in particular with regard to counter-terrorism operations. Delegations warned against a reinterpretation of the law on self-defence and an expansion of exceptions to the general prohibition on the use of force contained in Article 2, paragraph 4, of the Charter, in an irregular manner. It was also suggested that all such communications be listed separately on the website of the Council.

A. Implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions

17. The Special Committee considered the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions during the general exchange of views held at its 287th and 288th meetings, on 20 February, and at the 1st meeting of the Working Group of the Whole, on 21 February.

18. During the general exchange of views on the issue, several delegations emphasized the importance of the consideration of assistance to third States affected by the application of sanctions. The view was expressed that the Security Council should take a prudent and responsible approach to this issue in order to minimize the impact of sanctions on the general public and third States. While it was acknowledged that no formal requests for assistance had been made since 2003, it was noted that the item should be retained for preventative purposes. It was also suggested that the item had been overtaken by events and that its inclusion on the agenda of the Special Committee should be reconsidered.

Briefing

19. At its 1st meeting, the Working Group of the Whole was briefed by representatives of the Department of Political Affairs and the Department of Economic and Social Affairs of the Secretariat on developments relating to paragraph 12 of the report of the Secretary-General on the question (A/72/136), as requested by the General Assembly in paragraph 5 of its resolution 72/118. The representatives provided general information about the mechanisms available to monitor and evaluate sanctions regimes, to prevent adverse consequences of sanctions

and to provide, upon request by the Security Council, assistance to third States affected by the application of sanctions.

B. Introduction and implementation of sanctions imposed by the United Nations

20. Reference was made to the question of the introduction and implementation of sanctions imposed by the United Nations (see General Assembly resolution 64/115, annex) during the general exchange of views held at the 287th and 288th meetings of the Special Committee, on 20 February, and during the 1st meeting of the Working Group of the Whole, on 21 February.

21. During the general exchange of views and the 1st meeting of the Working Group of the Whole, several delegations reiterated their concerns regarding sanctions imposed by the Security Council. It was emphasized that sanctions should not be adopted indiscriminately or be used as blunt instruments designed to punish the population of the target country and that they could not be used as a response to all violations of international obligations.

22. Many delegations emphasized that sanctions should be introduced and applied in conformity with the provisions of the Charter and international law. It was reiterated that they should be imposed only as a measure of last resort when there existed a threat to international peace and security, a breach of the peace or an act of aggression, in accordance with the Charter. It was asserted that the objectives of sanctions regimes should be clearly defined, based on tenable legal grounds and imposed with a specific time frame, and that sanctions should be lifted promptly when there were no longer grounds for imposing them. Delegations reaffirmed their concerns about the imposition of unilateral sanctions in violation of international law. The view was expressed that, in practice, such sanctions were often imposed as a result of the extraterritorial application of national laws and regulations and that they infringed on the rights of affected States, in addition to the individual rights of affected persons.

23. Several delegations reaffirmed that sanctions, applied in accordance with the Charter, were an important instrument for the maintenance and restoration of international peace and security. In addition, it was highlighted that, when applied in a targeted fashion, sanctions could be efficient in attaining their objectives, while minimizing their adverse impact and unintended consequences for the civilian population and third parties.

24. A number of delegations welcomed the institution of regular briefings by the Secretariat on the document entitled "Introduction and implementation of sanctions imposed by the United Nations", annexed to General Assembly resolution 64/115, which had been adopted on the basis of the work of the Special Committee. It was noted that, in recent years, sanctions committees had organized open briefings to hear concerns and suggestions from Member States, which had increased transparency. A view was expressed that the Special Committee could be used as a forum for informed and evidence-based discussions with a view to further enhancing the efficacy and transparency of the Organization's sanctions regimes.

Briefing

25. At its 1st meeting, the Working Group of the Whole was briefed by a representative of the Department of Political Affairs on the document annexed to General Assembly resolution 64/115, as requested by the Assembly in paragraph 4 of its resolution 72/118. The representative gave information on the elements of the

document, responded to questions and provided general information about United Nations sanctions regimes, the role of the sanctions committees and expert panels in the implementation of sanctions, the monitoring and review mechanisms and recent developments in the implementation of sanctions regimes. The representative indicated that the information presented was available on the website of the subsidiary bodies of the Security Council.[11]

26. Delegations generally expressed their appreciation for the briefing. Some delegations welcomed the efforts made to enhance the fairness and transparency of the procedures relating to sanctions and to strengthen the knowledge base among delegations, and encouraged further interaction among sanctions committees, regional organizations and Member States for that purpose.

27. Some delegations encouraged the Secretariat to further improve communication and knowledge-sharing regarding sanctions with delegations and to increase the opportunities for capacity-building. The view was expressed that the Secretariat could study the impact of unilateral sanctions and whether they had been adopted in compliance with international law. The Secretariat was also encouraged to enhance cooperation with the private sector in the implementation of sanctions.

28. The view was expressed that a comprehensive thematic review of United Nations sanctions regimes was needed. The representative of the Department of Political Affairs stated that such an initiative would depend on Member States and their engagement with stakeholders with a view to launching such a review.

29. It was suggested that an additional expert be added to each panel of experts to report on the unintended consequences of sanctions. The representative of the Department of Political Affairs indicated that the Security Council had already mandated experts to report on unintended consequences and, accordingly, changes to the composition of each panel of experts would be subject to the mandate established and measures imposed by the Security Council.

30. With respect to the Ombudsperson of the Security Council Committee established pursuant to resolution 1267 (1999), the Secretariat was asked to provide information on the relationship between the Ombudsperson and the Focal Point for Delisting. The representative of the Department of Political Affairs indicated that the relationship between the Ombudsperson and the Focal Point would vary according to their mandates. The Secretary-General was urged to finalize the process of recruiting a new Ombudsperson, given that the post had been vacant for several months.

C. Consideration of the revised proposal submitted by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

31. The revised proposal submitted by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (see A/53/33, para. 98) was referred to in general terms during the general exchange of views held at the 287th and 288th meetings of the Special Committee, on 20 February, and was considered at the 1st meeting of the Working Group of the Whole, on 21 February.

32. While support was expressed for the continued consideration of the proposal, other delegations were of the view that the proposal was among those that duplicated

[11] www.un.org/sc/suborg/.

revitalization efforts undertaken elsewhere within the Organization and that it had been superseded by events.

33. In the Working Group of the Whole, the sponsor was encouraged to consider extracting those key elements of the proposal that remained valid, with a view to presenting them in a non-paper, possibly in combination with key elements of other proposals, for further consideration by the Special Committee. The sponsor indicated that it would consider doing so.

D. Consideration of the revised working paper submitted by Belarus and the Russian Federation

34. During the general exchange of views held at the 287th meeting of the Special Committee, on 20 February, and at the 1st meeting of the Working Group of the Whole, on 21 February, the Special Committee considered the further revised working paper submitted by Belarus and the Russian Federation at the 2014 session of the Special Committee (see A/69/33, para. 37), in which it was recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence.

35. The sponsors of the proposal recalled the background thereto and highlighted the continued relevance of the subject matter of the revised working paper and its value in providing a common understanding of the legal consequences of the resort to the use of force by States without prior authorization by the Security Council. A sponsor delegation expressed its regret that consensus had not yet been achieved on the proposal, which had initially been introduced at the 1999 session of the Special Committee (see A/54/33, para. 90). The sponsors favoured retaining the proposal on the agenda of the Special Committee and called upon delegations to work on a consensus document that could be presented to the General Assembly.

36. Several delegations reiterated their support for the proposal and its further consideration. It was pointed out that an advisory opinion by the International Court of Justice would contribute to the clarification of the provisions of the Charter regarding the use of force and to the strengthening of the role of the United Nations.

37. Opposition to the request for an advisory opinion, which had been expressed at previous sessions of the Special Committee, was reiterated.

E. Consideration of the working paper submitted by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations

38. The working paper entitled "Strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations", submitted by Cuba at the 2012 session of the Special Committee (A/67/33, annex), was referred to during the general exchange of views held at the 287th and 288th meetings of the Special Committee, on 20 February, and was considered at the 1st meeting of the Working Group of the Whole, on 21 February.

39. During the general exchange of views, the sponsor delegation stressed that the working paper remained valid and invited delegations to share their views on it. Several delegations expressed their support for the proposal. It was suggested that the issue of reforming the Charter be brought before the International Law Commission. Other delegations were of the opinion that the Special Committee should not consider

topics that would be duplicative of or inconsistent with the roles of the principal organs of the United Nations as set forth in the Charter.

40. During the 1st meeting of the Working Group of the Whole, the sponsor delegation asserted that the Special Committee was the appropriate forum for a discussion on reform of the Charter, especially in the light of the ongoing reform process within the Organization, and reiterated that the proposal was aimed at making the Organization more democratic and representative. It encouraged delegations to submit suggestions with a view to reaching consensus on the working paper, and proposed establishing an ad hoc subsidiary body to consider the issue further.

41. Several delegations expressed support for the proposal. It was noted that the aim of the working paper was to achieve the delicate balance envisaged in the Charter between the mandates of all the principal organs of the United Nations and that the working paper should therefore remain on the agenda of the Special Committee.

F. Consideration of the revised working paper submitted by Ghana on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes

42. The revised working paper on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes, submitted by Ghana at the 2018 session of the Special Committee (see annex) in follow-up to its 2015 concept paper (A/70/33, annex II) and its 2016 working paper (A/71/33, annex) on the same subject, was referred to during the general exchange of views held at the 287th and 288th meetings of the Special Committee, on 20 February, and was considered at the 1st and 2nd meetings of the Working Group of the Whole, on 21 and 22 February.

43. During the general exchange of views, several delegations expressed their support for the revised working paper, noting that the subject was topical and relevant to the work of the Special Committee and that it could serve the practical purpose of helping to fill gaps in the work of the Organization. The Special Committee was encouraged to develop guidelines to facilitate the cooperation of the United Nations with regional organizations. It was also noted that the work on the subject should not duplicate or prejudice discussions in other forums of the United Nations.

44. At the 1st and 2nd meetings of the Working Group of the Whole, the sponsor delegation explained that the revised working paper took into account existing instruments and legal frameworks and identified gaps in and challenges to the working relationship between the United Nations and regional arrangements or agencies with regard to the coordination of their activities. It noted that the revised working paper was not exhaustive and welcomed suggestions from delegations, which could be followed by informal consultations with a view to developing guidelines for discussion at the next session of the Special Committee.

45. Several delegations reiterated their support for the revised working paper. It was emphasized that regional organizations played a critical role in maintaining international peace and security, but that they had to operate within the framework of the Charter. The view was expressed that the paper could aid in identifying possible guidelines, which could be formulated during an intersessional dialogue.

46. Some delegations asked the sponsor delegation to clarify the expected outcome of the document and the relevant legal framework. Delegations noted that Chapter VIII of the Charter, as well as the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in

the Maintenance of International Peace and Security (General Assembly resolution 49/57, annex), already provided a framework for cooperation between the United Nations and regional arrangements or agencies. It was also reiterated that the revised proposal should not be duplicative of efforts conducted elsewhere within the United Nations. In that regard, a suggestion was made to narrow the ideas and proposals contained in the revised working paper.

Chapter III
Peaceful settlement of disputes

47. The Special Committee considered the item entitled "Peaceful settlement of disputes" during the general exchange of views held at its 287th and 288th meetings, on 20 February, and during the 2nd meeting of the Working Group of the Whole, on 22 February.

48. Delegations expressed their support for all efforts to address the peaceful settlement of disputes. Delegations recalled that States should refrain from the threat or use of force, highlighting the obligation to settle disputes by peaceful means pursuant to Articles 2 (3) and 33 of the Charter. It was noted that the peaceful settlement of disputes was cost-effective in preventing conflict and maintaining international peace and security. Some delegations emphasized the right of States to freely choose the peaceful means to settle international disputes. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex) was recalled in that respect.

49. Several delegations asserted the importance of preventive diplomacy, conflict prevention and respect for human rights in the peaceful settlement of disputes. In that connection, the Human Rights Up Front initiative launched by the Secretary-General and the role of the Organization in preventive diplomacy and conflict prevention were mentioned in the Working Group of the Whole. Some delegations also pointed out the importance of multilateralism in the peaceful settlement of disputes.

50. A number of delegations reaffirmed the role of the International Court of Justice, as the principal judicial organ of the United Nations, in promoting the peaceful settlement of disputes and stressed the usefulness of the Court's advisory opinions on legal questions. Some underlined the importance of strengthening international courts, tribunals and arbitral mechanisms. The significance of the Manila Declaration on the Peaceful Settlement of International Disputes, approved by the General Assembly in 1982 and annexed to its resolution 37/10, was also recalled.

51. Several delegations stated that the annual thematic debate on the means for the settlement of disputes contributed to the more efficient and effective use of peaceful means and promoted a culture of peace among Member States. In the Working Group of the Whole, several delegations expressed the view that the Special Committee should continue to analyse all means envisaged in Article 33 of the Charter.

52. Delegations reiterated their preference that, in accordance with the mandate of the Special Committee, the question of the peaceful settlement of disputes remain on its agenda.

A. Means for the settlement of disputes: exchange of information on State practices regarding the use of negotiation and enquiry

53. In accordance with paragraph 6 (a) of General Assembly resolution 72/118, delegations focused their debate on the subtopic "Exchange of information on State practices regarding the use of negotiation and enquiry".

54. The view was expressed that negotiation was the fundamental and primary means of dispute settlement, as was evident from dispute settlement clauses of numerous multilateral and bilateral instruments, including the Charter itself, and in declarations adopted by the General Assembly relating to the peaceful settlement of disputes. It was noted that negotiation had often been resorted to by States in resolving

not only international disputes but also regional and national conflicts and situations. The role of negotiation as an essential prerequisite for the functioning of regional organizations was also mentioned. It was suggested that negotiation, which featured direct dialogue and consultation between the parties to a dispute, and was the simplest way for the parties to manage the dispute settlement process, could best reflect the free will of the parties and the principle of sovereign equality and afford a more just and sustainable solution to a dispute. Therefore, the view was expressed that, although the negotiation process might be difficult and time-consuming, the outcome of a dispute settlement by negotiation was more likely to be accepted and implemented by the parties.

55. Several delegations stated that the principles of good faith, equality and justice were essential for negotiation to be meaningful. Some also mentioned the importance of patience, flexibility, cooperation, political will, mutual respect and solidarity during a negotiation process. In that respect, the case law of the International Court of Justice,[12] setting out an obligation of the parties to conduct negotiations in a meaningful fashion, was recalled. General Assembly resolution 53/101, on principles and guidelines for international negotiations, was also recalled. It was noted that, during the negotiation process, the parties to a dispute should refrain from taking any unilateral measures that would hinder the achievement of a final agreement. The view was expressed that all avenues of negotiation at all levels should be exhausted before parties resorted to international courts or tribunals. Some delegations also highlighted the important role played by the United Nations and regional organizations in negotiation processes.

56. Delegations offered practical examples of negotiation, such as the Joint Comprehensive Plan of Action reached in 2015 between the Islamic Republic of Iran, the five permanent members of the Security Council and Germany ("P5+1") and the European Union; the settlement of disputes concerning land and maritime delimitations between China and its neighbouring States; maritime boundary disputes involving the United States of America; land and maritime boundary disputes involving India; the facilitation of the Belgrade-Pristina dialogue by the European Union; the mediation of Cuba for the settlement of the Colombian dispute in 2014; the agreement reached by Guinea, Liberia and Sierra Leone during a summit hosted by Morocco concerning the Mano River in 2002; the General Peace Treaty reached in 1980 between El Salvador and Honduras; and the peaceful settlement between Ukraine and the Russian Federation in the International Court of Justice. Delegations also exchanged examples of national-level disputes that were settled by negotiation.

57. With regard to enquiry, it was stated that enquiry was based on the elucidation of facts and represented a valuable peaceful means for the settlement of international disputes. The view was expressed that the application of enquiry should be strictly governed by the purposes and principles of the Charter. The Convention for the Pacific Settlement of International Disputes, of 1907, and the International Fact-Finding Commission envisaged in the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, were recalled as important for enquiry. Some delegations stressed the importance of the role of the United Nations and the specialized agencies in the use of enquiry.

58. The Special Committee recommends that the thematic debate to be held at its next session be on the subtopic "Exchange of information on State practices regarding the use of mediation".

[12] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3, para. 85.

B. Proposal by the Russian Federation to recommend that the Secretariat be requested to establish a website on the peaceful settlement of disputes and update the *Handbook on the Peaceful Settlement of Disputes between States*

59. During the general exchange of views held at the 287th meeting of the Special Committee, on 20 February, and at the 3rd meeting of the Working Group of the Whole, on 23 February, the sponsor delegation recalled its proposal, as revised in 2014 (see A/69/33, para. 52), that the Special Committee consider requesting the Secretariat to establish a website, within existing resources, dedicated to the peaceful settlement of disputes between States, which would include references to relevant United Nations documents, as well as to the United Nations and other organs active in the field, and to update the *Handbook on the Peaceful Settlement of Disputes between States*, prepared by the United Nations in 1992. It was recalled that the *Handbook* had been prepared on the basis of an earlier initiative of the Special Committee (see General Assembly resolutions 39/79 and 39/88 A of 13 December 1984).

60. Several delegations voiced support for the proposal in the general exchange of views and in the Working Group of the Whole. The view was expressed that updating the *Handbook* and establishing a website on the means for the peaceful settlement of disputes would be useful to all Member States. It was maintained that updating the *Handbook* and establishing a website would likely not require additional resources.

61. Some delegations emphasized that the proposal had been on the agenda of the Special Committee for several years and requested that it be given thorough consideration. Some other delegations questioned the added value of the proposal given the availability of other sources of information online, including a number of websites of international organizations or specialized agencies of the United Nations. Concern was also expressed that it would not be a proper prioritization of the limited resources allocated to the Secretariat. The sponsor delegation asked that the proposal be retained on the agenda of the Special Committee.

Chapter IV

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

62. Reference was made to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* during the general exchange of views held at the 287th and 288th meetings of the Special Committee, on 20 February, and during the 2nd meeting of the Working Group of the Whole, on 22 February.

63. During the general exchange of views, delegations commended the continuing efforts of the Secretariat to update the *Repertory* and the *Repertoire* and to eliminate the backlog in their preparation. The significance of the two publications as sources of reference and as effective means of maintaining the institutional memory of the Organization, as well as their importance in the dissemination of the work of the Organization, were recalled. Several delegations emphasized the need to eliminate the backlog with regard to volume III of the *Repertory*. The Secretariat was also encouraged to continue its efforts to publish the *Repertory* and the *Repertoire* in all official languages of the United Nations at the same time.

64. Delegations expressed appreciation to those Member States that had contributed to the two trust funds established for the *Repertory* and the *Repertoire*, which had facilitated the progress in eliminating the backlog with regard to those publications, and encouraged Member States to make additional contributions.

65. At its 2nd meeting, the Working Group of the Whole was informed by representatives of the Secretariat about the status of the preparation of the *Repertory* and the *Repertoire*.

66. Concerning the status of the *Repertory*, it was reported that studies on Article 49 for volume III of Supplements 7 to 9 (1985–1999) and Supplement 10 (2000–2009) had been drafted and were currently under review. A study on Article 33 (1) had been completed and would shortly be submitted to the lead department, the Department of Political Affairs, for review. Studies on Article 23 (1), second phrase, and (2) for Supplements 7 to 9 (1985–1999) were being initiated in the Codification Division. Work continued in the Office of the Legal Counsel on studies on Articles 104 and 105 for volume VI of Supplement 10 (2000–2009). The Department of Economic and Social Affairs was taking steps to prepare studies on volumes II and IV for Supplement 10 (2000–2009). With regard to Supplement 11 (2010–2015), the Codification Division was finalizing a study on Article 13 (1) (a) and the Office of Human Resources Management, in consultation with the Office of Administration of Justice, was completing a study on Article 101. On the website of the *Repertory*, 43 completed volumes, together with advance versions of studies under review, could be searched through the website's full-text search function.

67. The Secretariat maintained its long-standing relationship with the University of Ottawa and was also assisted by the work of interns in preparing studies for the *Repertory*. The Secretariat reiterated its appeal, previously made in the Sixth Committee, that delegations convey expressions of interest by academic institutions for possible cooperation on the *Repertory*. To date, the appeal had resulted in contact with two academic institutions in the Asia-Pacific region, one in the Latin America and the Caribbean region and one in the Western European and other States region. The Secretariat had also asked States to consider sponsoring associate experts to work on the *Repertory*.

68. Since the establishment of the trust fund in 2005, more than $166,000 had been donated.[13] After the use of part of the funds for the preparation of *Repertory* studies, approximately $45,000 remained available in the trust fund.

69. With regard to the *Repertoire*, it was reported that the Security Council Practices and Charter Research Branch of the Security Council Affairs Division had completed Supplement 19, covering the years 2014 and 2015, which was in the process of being published. An advance version was available on the website of the *Repertoire*. The Branch had also made significant progress in the drafting of Supplement 20, covering the period from 2016 to 2017. Advance versions of parts I, IX and X would be made available on the website by June 2018, followed by the remaining parts in September 2018. To achieve progress, the Branch had continued to develop efficiency-enhancing initiatives and had closely collaborated with other departments.

70. Work was also continuing on translating the *Repertoire* into all the official languages and publishing the completed Supplements. All Supplements covering the period from 1993 to 2011 had been made available online in all official languages. The English version of Supplement 18 was to be made available in print in March 2018.

71. It was also emphasized that the search engine of the website of the *Repertoire* had been updated with the aim of making searches of the *Repertoire* more accessible and effective for Member States and the public. Modern technology continued to be leveraged to enhance the tools on the website and their interactive capabilities, for example through the publication of the *Highlights of Security Council Practice* and the Security Council monthly statistics.

72. The Branch had responded to numerous requests for information relating to the current and past practice of the Security Council and its subsidiary organs. It was emphasized that the preparation and publication of the *Repertoire* continued to rely on voluntary contributions to the trust fund and the sponsorship of associate experts.[14]

73. Following the reports by the representatives of the Secretariat, a suggestion was made to dedicate a section of the *Repertoire*, and of its website, to practice relating to Article 51 of the Charter, so as to ensure that the information was easily available to Member States. The representative of the Secretariat responsible for the *Repertoire* indicated that Part VII of the *Repertoire* contained the relevant references.

74. The Special Committee recommends that the General Assembly:

(a) Commend the Secretary-General for the progress made in the preparation of studies for the *Repertory of Practice of United Nations Organs*, including the use of the internship programme of the United Nations and cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*;

(b) Encourage Member States to identify academic institutions that have the capacity to contribute to the preparation of studies for the *Repertory* and to provide the contact details of such institutions;

(c) Note with appreciation the contributions made by Member States to the trust fund for the elimination of the backlog in the *Repertory*, as well as the trust fund for the updating of the *Repertoire*;

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[13] Donations were made by Albania, Chile, Finland, Greece, Guinea, Ireland, Lebanon, Luxembourg, Turkey and the United Kingdom of Great Britain and Northern Ireland.

[14] Donations were made, or associate experts were sponsored, by Albania, Angola, Belarus, Belgium, Benin, China, the Congo, Croatia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Libya, Luxembourg, Mexico, New Zealand, Nigeria, Norway, Pakistan, Portugal, Qatar, the Republic of Korea, the Russian Federation, Singapore, Switzerland, Turkey and the United Kingdom.

(d) Reiterate its call for voluntary contributions to the trust fund for the elimination of the backlog in the *Repertory* so as to further support the Secretariat in carrying out the effective elimination of that backlog; voluntary contributions to the trust fund for the updating of the *Repertoire*; and the sponsoring, on a voluntary basis and with no cost to the United Nations, of associate experts to assist in the updating of the two publications;

(e) Call upon the Secretary-General to continue his efforts towards updating the two publications and making them available electronically in all their respective language versions, and encourage the continued updating of the website for the *Repertory*;

(f) Note with concern that the backlog in the preparation of volume III of the *Repertory*, although slightly reduced, has not been eliminated, and call upon the Secretary-General to address that issue effectively and on a priority basis, while commending the Secretary-General for progress made in reducing the backlog;

(g) Reiterate the responsibility of the Secretary-General for the quality of the *Repertory* and the *Repertoire*, and with regard to the *Repertoire* call upon the Secretary-General to continue to follow the modalities outlined in paragraphs 102 to 106 of his report dated 18 September 1952 (A/2170).

Chapter V

Working methods of the Special Committee and identification of new subjects

A. Working methods of the Special Committee

75. The issue of the working methods of the Special Committee was addressed by several delegations during the general exchange of views held at the 287th and 288th meetings of the Special Committee, on 20 February, and was considered at the 3rd meeting of the Working Group of the Whole, on 23 February.

76. During the general exchange of views, delegations stressed the importance of the functions of the Special Committee relating to the maintenance of international peace and security, the development of cooperation among States and the promotion of international law, as well as the role of the Special Committee in the clarification and interpretation of provisions of the Charter. Several delegations also emphasized the role of the Special Committee in assisting in the revitalization and strengthening of the Organization, and in the reform process, in accordance with General Assembly resolution 3499 (XXX). A number of delegations highlighted the adoption of the Manila Declaration on the Peaceful Settlement of International Disputes as one of the major achievements of the Special Committee.

77. The Special Committee was urged to fully implement the decision on working methods adopted in 2006, as reflected in paragraph 3 (d) of General Assembly resolution 71/146. Some delegations encouraged the Special Committee to examine the frequency and duration of its meetings and to seriously consider meeting every two years or shortening its sessions. Delegations also reiterated that the work of the Special Committee should be reviewed in order to ensure that it added value, that the overlap between organs considering the same or similar issues was minimized and that items that had been or were being considered elsewhere in the Organization were not duplicated by the Special Committee. It was suggested that stagnant items on the agenda of the Special Committee should be revisited with a view to improving efficiency and productivity.

78. It was suggested that several items on the agenda could benefit from careful scrutiny and needed to be thoroughly debated and analysed by the Special Committee. Several delegations reiterated that the full execution of the mandate of the Special Committee depended on the political will of States and on the full and effective implementation of the methods of work of the Special Committee. The view was expressed that the working methods of the Special Committee should be guided by the substance of its work. It was observed that the work of the Special Committee should be directed primarily at ensuring that the Organization lived up to the goals of the rule of law and justice.

79. At the 3rd meeting of the Working Group of the Whole, some delegations encouraged the Special Committee to review whether it should maintain certain proposals on its agenda and to consider the frequency and duration of its meetings. Other delegations said that all proposals should be meaningfully discussed and that a reconsideration of the frequency and duration of the meetings would be premature. In that regard, it was also suggested that a distinction should be made in the report of the Special Committee between the views of delegations expressed during the general exchange of views and those expressed in the Working Group of the Whole.

80. With regard to the annual thematic debate on the peaceful settlement of disputes, "mediation" was suggested as the subtopic for the next session of the Special Committee.

B. Identification of new subjects

81. The issue of the identification of new subjects was considered during the general exchange of views held at the 287th and 288th meetings of the Special Committee, on 20 February, and at the 3rd meeting of the Working Group of the Whole, on 23 February.

82. During the general exchange of views, a number of delegations recalled proposals made at previous sessions of the Special Committee and called for their meaningful consideration. Several delegations stated that the Special Committee could contribute to the examination of legal matters relating to the reform and revitalization of the Organization and its organs, including issues surrounding the roles and prerogatives of the General Assembly and the Security Council. Others stressed that proposals must be practical and non-political and must not duplicate efforts elsewhere within the United Nations.

83. At the 3rd meeting of the Working Group of the Whole, the representative of Mexico noted that communications to the Security Council under Article 51 of the Charter had increased, in particular with regard to counter-terrorism operations. Concern was expressed regarding recent interpretations of the right to self-defence in response to armed attacks perpetuated by non-State actors. It was proposed that the Special Committee could consider the substantive and procedural aspects of the issue, in order to clarify the interpretation and application of Article 51 and avoid possible abuse of the right to self-defence. It was suggested that the Special Committee could discuss the content of such communications to the Council to ensure that the limits established under Article 51 and other applicable rules of international law were satisfied, taking into account considerations of proportionality and necessity. Furthermore, it was observed that the Council should report to States that were not members of the Council following the receipt of such communications. It was further suggested that a specific section could be created on the website of the Council where all communications concerning Article 51 could be accessed.

84. Various delegations expressed interest in the proposal, encouraging the representative of Mexico to present a written proposal for consideration, while others questioned whether the Special Committee would be the competent forum to address the issues raised.

Annex

Revised working paper by Ghana on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes

Introduction

1. Under Chapter VI, Article 33, of the Charter of the United Nations, Member States that are parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, are entreated to first seek a solution through one of the peaceful methods or means stipulated therein, one of which is the resort to regional arrangements or agencies.

2. The need for peaceful settlement of disputes, as envisaged under Article 33 of the Charter, was underscored in General Assembly resolution 37/10, by which the Assembly approved the Manila Declaration on the Peaceful Settlement of International Disputes and acknowledged the role of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization in elaborating the text of that Declaration. In this regard, on 9 December 1994, the Special Committee adopted the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security (hereinafter "the 1994 Declaration").[1]

3. The Charter establishes the Security Council as the principal organ charged with the responsibility for maintaining international peace and security, while foreseeing a role for regional arrangements or agencies, especially with regard to the peaceful settlement of disputes. Under Chapter VIII of the Charter, regional arrangements or agencies are encouraged to contribute towards the maintenance of peace and security insofar as such efforts are in accordance with the Charter. The Council is encouraged to utilize regional arrangements or agencies, but regional arrangements or agencies may take enforcement action only with the authorization of the Council.

4. In addition, Article 54 provides that the Security Council should at all times be kept fully informed of the activities undertaken or contemplated by regional organizations for the maintenance of international peace and security.

Main elements of the revised working paper

5. The Special Committee has had occasions in the past decades to consider principles that should guide the relationship between the United Nations and regional organizations or arrangements, as Member States expected the United Nations to play a greater role in the maintenance of international peace and security and more effectively respond to global threats and challenges.

6. Notwithstanding the past efforts of the Special Committee in considering and even adopting such guiding principles, recent historical and contemporary experiences of the international community, including the United Nations and regional arrangements or agencies, in various undertakings to address situations that threatened international peace and security have underscored the imperative of promoting better coordination and cooperation between the United Nations and regional organizations.

7. Given the important role that regional arrangements or agencies play in promoting the peaceful settlement of disputes, the rule of law, human rights and international humanitarian law in the maintenance of peace and security, it is

[1] General Assembly resolution 49/57, annex. See also A/61/204-S/2006/590, A/67/280-S/2012/614 and Security Council resolution 2167 (2014).

necessary for the United Nations, including both the General Assembly and the Security Council, to explore urgent measures to improve their working relationship with regional arrangements or agencies towards the peaceful settlement of disputes.

8. These measures will include exploring institutional mechanisms to enable more effective and timely interaction and strategic cooperation between the Organization and the regional arrangements or agencies. In so doing, the Special Committee could not only build on its past work on this topic, but also draw from various seminal reports of the Secretary-General, including "An Agenda for Peace" (1992; A/47/277-S/24111) and "In larger freedom: towards development, security and human rights for all" (2005; A/59/2005), which highlight ideas such as:

(a) Regional security;

(b) The role that regional organizations could play in preventive diplomacy;

(c) Early warning systems;

(d) Peacekeeping and post-conflict peacebuilding and means by which the United Nations could work with regional organizations in more predictable and reliable partnerships.

9. Other reports of the United Nations organs dealing with these subjects may also be found relevant, for example the report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people (see A/70/95-S/2015/446).

10. Recent challenges have underlined the urgent necessity for the Special Committee to reactivate and revisit the topic of the need to strengthen the cooperation, coordination and relationship between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes that threaten international peace and security. These challenges include the perception that, in some cases, the United Nations has not succeeded in effectively cooperating with regional arrangements or agencies and that, in other cases, there has been a lack of clarity as to how the United Nations might engage in situations concerning multiple regional arrangements or agencies at the same time.

11. In addition, revisiting this topic will offer Member States an opportunity to assess the degree of compliance with or implementation of the 1994 Declaration with a view to addressing any apparent gaps or shortcomings at the level of cooperation and working relationships between the United Nations and regional arrangements or agencies in the context of the peaceful settlement of disputes.

Identified gaps or shortcomings and challenges to greater cooperation

12. The following gaps or shortcomings and challenges to greater cooperation have been identified:

(a) It may be noted that fierce debates preceded the deployment of United Nations missions in some conflict zones (e.g. Liberia and Sierra Leone), reflecting the Organization's ambivalence towards co-deploying with a regional organization in Africa;

(b) **Lack of a framework for a collaborative process**. In order to forestall future misconceptions or wilful manipulations of the provisions of Chapter VIII of the Charter, the United Nations must confirm its commitment to working more closely with regional organizations by creating, through a collaborative process, a framework that defines the responsibilities of the United Nations and relevant regional organizations in a given conflict situation, while maintaining flexibility with regard to the rate of response and other peculiarities of varied conflict situations. For

example, it is a major principle of the United Nations not to intervene in a conflict without a peace agreement, whereas some regional organizations or arrangements are prepared to do so. However, in certain situations, it is not possible to negotiate peace agreements without first establishing some measure of stability. For example, the Economic Community of West African States (ECOWAS) deployed troops in Sierra Leone and Liberia without peace agreements and subsequently created the conditions for negotiations that led to the respective peace agreements;

(c) **Lack of a monitoring mechanism**. A mechanism for monitoring and periodic evaluation should accompany the framework for cooperation between the United Nations and regional organizations or arrangements to ensure that all the parties fulfil their responsibilities;

(d) **Lack of partnership agreements between the United Nations and all regional organizations or arrangements**. Specific action should be taken to hold consultations on and finalize partnership agreements between the United Nations and regional organizations. For this relationship to be meaningful, the roles and obligations of all parties should be clearly stated, including whether United Nations approval of missions led by the African Union or ECOWAS will be granted before or after deployment and what effect this will have on the legitimacy of these missions. The principle of the sovereignty and territorial integrity of Member States is central to the United Nations. Likewise, the African Union respects the sovereignty of its member States. However, the Constitutive Act of the African Union, in stark contrast to its predecessor, the Charter of the Organization of African Unity, states that the Union has the right to intervene in a member State pursuant to a decision of the Assembly of Heads of State and Government of the Union in respect of grave circumstances, namely war crimes, genocide and crimes against humanity. This raises issues of how mandates will be determined and what criteria for intervention must be fulfilled by both organizations in order to ensure a smooth transition from one mission to another. In terms of cost-sharing, for example, the United Nations and bilateral and multilateral development partners of ECOWAS will have to bear the burden of financing joint United Nations-ECOWAS operations for the foreseeable future. Most ECOWAS member States will not be in a position to contribute financially to peace missions while they continue to stagger under the weight of unwieldy debt burdens. Funding has long been a major issue for the African Union, ECOWAS and other African subregional organizations;

(e) It remains unclear what is the best way for the United Nations to engage in cases of dispute settlement concerning a State member of a regional organization that is not a member of the United Nations;

(f) A lack of structural arrangements makes it impossible for the regional arrangements to mobilize quickly to perform tasks when the United Nations is unable to do so;

(g) The establishment of a United Nations liaison office, along the lines of the United Nations Office to the African Union in Addis Ababa, should also help the relationship to develop, taking into consideration regional specificities;

(h) In regional organizations and arrangements, a council on peace and security could be established to liaise closely with the Security Council, along the lines of the Peace and Security Council of the African Union;

(i) **Streamlining capacity-building initiatives**. It is important to streamline the capacity-building initiatives of the United Nations and other development partners towards the priority areas and needs of regional arrangements or agencies:

(i) Strengthen the role of civil society to enhance its input in conducting research, providing expertise to regional organizations or arrangements and

assisting in the implementation of stated goals in diverse areas of peace and security;

(ii) The organizations and arrangements should partner with universities and other educational and training institutions to establish training programmes specifically targeted at developing, especially among young people, the knowledge and skills needed to enhance capacity for conflict management;

(j) In cases where regional or subregional organizations deploy peacekeeping operations authorized by the Security Council, they contribute to the maintenance of international peace and security, in line with the provisions of Chapter VIII of the Charter of the United Nations and the need to enhance the predictability, sustainability and flexibility of the financing of regional organizations when they undertake peacekeeping under a Security Council mandate;

(k) Cooperation between the United Nations and some regional organizations or arrangements in crisis prevention and mediation has greatly contributed to the maintenance of peace and security in some parts of the world. However, partnership in this area remains largely ad hoc. There is, therefore, an urgent need to develop a common strategic vision underpinned by a common understanding in order to strengthen and better coordinate action in the peaceful settlement of disputes.

13. It is anticipated that these identified gaps and proposals would be developed into guidelines to serve as a framework that would facilitate improved engagement between the United Nations and regional arrangements or agencies.

14. The references to the relationship between the United Nations and the African Union illustrate the need to strengthen the relationship and cooperation between the United Nations and regional organizations.

18-03219 (E) 120318